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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176791
Party	Defendant MATTEL, INC.
Correspondence Address	Lawrence Y. Iser, Esq. Kinsella Weitzman Iser Kump & Aldisert LLP 808 Wilshire Blvd., Suite 300 Santa Monica, CA 90401 UNITED STATES CFitzgerald@kwikalaw.com
Submission	Other Motions/Papers
Filer's Name	Chad R. Fitzgerald
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Signature	/crf/
Date	02/11/2010
Attachments	Objections to Cote Decl.pdf (7 pages)(37323 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 78/751,105
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.

Applicant

**APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS
TO STRIKE PORTIONS OF DECLARATION OF MELISSA K. COTE**

Applicant Mattel, Inc. hereby objects to and moves to strike portions of the Declaration of Melissa K. Cote dated March 13, 2009.

The following format is used below:

(1) the Declaration is copied verbatim;

(2) where Applicant objects to all or a portion of a paragraph, the objected-to portion is shown as stricken (e.g., ~~The person told me that~~ ...) followed by a highlighted “objection number” (e.g., [Obj. 2]); and

(3) the paragraph in the Declaration with the stricken language is followed by a table (or box) containing (a) the “objection number” for the objected-to portion, (b) the page and line reference in the Declaration for the objected-to portion, (c) the ground(s) upon which Applicant objects and moves to strike the objected-to portion, and (d) for the Board’s convenience, two boxes with headings “Sustained/Stricken” and “Overruled” for marking by the Board.

Respectfully submitted,

DATED: February 11, 2010

KINSELLA WEITZMAN ISER KUMP &
ALDISERT LLP

By: /crf/
Lawrence Y. Iser
Chad R. Fitzgerald
Attorneys for Applicant MATTEL, INC.

DECLARATION OF MELISSA K. COTE DATED MARCH 13, 2009

WITH OBJECTIONABLE PORTIONS STRICKEN

DECLARATION OF MELISSA K. COTE

Melissa K. Cote declares under penalty of perjury as follows:

1. I am a paralegal for Hasbro, Inc., a Rhode Island corporation with offices at 1027 Newport Avenue, Pawtucket, RI 02862 (“Hasbro”). I first joined Hasbro in 2001. I submit this declaration as testimony in connection with the above-captioned proceeding.

2. I have access to the books and records of Hasbro relevant to the matters covered herein. As a result of my job responsibilities I am generally familiar with the business of Hasbro and Hasbro’s use of MOTOWN and MOTOWN-formative trademarks (the “MOTOWN Marks”) in connection with (1) Hit Clips, ~~the product depicted in the photograph attached hereto as Exhibit 1 and called “Hit Clips Discs Motown 3 Pack”,~~ and (2) ToothTunes, ~~the product depicted in the photograph attached hereto as Exhibit 2 and called “ABC Jackson 5” Turbo Tooth Tunes (collectively, the “MOTOWN Toys”).~~ [Obj. 1] I confirm that the facts and matters set out herein are based on my own knowledge and from the records and documents of Hasbro to which I have access.

OBJECTION NO.	REFERENCE	GROUND S	BOARD’S RULING
1	¶ 2	(a) Exhibit speaks for itself (Fed. R. Evid. 1002); (b) Mischaracterizes evidence.	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

3. ~~On or around May 19, 2004, Hasbro entered into a license agreement with Universal Music Enterprises, a division of UMG Recordings, Inc. (“UMG”) concerning Hit Clips. A true and correct copy of the license agreement is attached hereto as Exhibit 3. On or around May 24, 2007, in a letter agreement between Hasbro and UME, Hasbro was given clearance for the use of the ABC (Jackson Five) recording. The parties are still negotiating a~~

~~long form license for the recording and no royalty has yet been paid. A copy of the May 24, 2007 letter is attached as Exhibit 4. [Obj. 2]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
2	¶ 3	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002); (c) Hearsay (Fed. R. Evid. 802); (d) Lacks Authentication (Fed. R. Evid. 901).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

4. Hasbro sold Hit Clips nationwide in 2005 and sold Hit Clips in stores such as Walmart, Target and Toys “R” Us to consumers ages 5 and up. The retail price for Hit Clips was approximately \$11.49 for the 3-pack.

5. Hasbro began selling ToothTunes, which is intended to be used by children, nationwide in 2007 and sold ToothTunes in stores such as WalMart, Target, Toys “R” Us, and K-Mart continuously since that time. The retail price for ToothTunes is approximately \$9.99.

6. ~~Hasbro’s data shows that in 2005, gross sales for the Hit Clips were approximately \$_____.~~ Gross sales for the ToothTunes in 2008 were approximately \$_____.
Hasbro pays UMG royalties on a per unit basis as set forth in the Hit Clips license agreement between the parties. _____

_____. ~~Hasbro’s total sales of the MOTOWN Toys, bearing the MOTOWN marks, were in excess of \$_____.~~ A copy of Hasbro’s royalty statement relating to Hit Clips is attached as Exhibit 5. [Obj. 3]

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
3	¶ 6	(a) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

7. ~~Hasbro's data shows _____ units of Hit Clips sold in 2005. _____ units of the ToothTunes were sold in 2008. Hasbro has sold in excess of _____ units of the MOTOWN Toys bearing the MOTOWN marks. A copy of Hasbro's royalty statement relating to Hit Clips is attached as Exhibit 5.~~ [Obj. 4]

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
4	¶ 7	(a) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

Declared under penalty of perjury of the laws of the United States of America this day of
13th March, 2009 at Pawtucket, Rhode Island.

/S/
Melissa K. Cote

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Evidentiary Objections and Request to Strike has been personally served on counsel for Opposer UMG Recordings, Inc., both personally and through ESTTA, on February 11, 2010.

/crf/

Chad R. Fitzgerald